

REMARKS

This application has been carefully reviewed in view of the Office Action of February 28, 2003. Claims 12, 13 and 14 were rejected under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 12, 13 and 14 are dependant on claim 6, which is amended as discussed below, and the Applicant believes claims 12-14 now clearly set forth Applicants' invention.

Claims 11-14 were rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Specifically, claim 11 recites "a sensor placed on the body." Claims 12 -14 are all dependent on claim 11. Claim 11 has been amended pursuant to the Examiner's recommendation to read "a sensor adapted to be placed on the body." Accordingly, claims 11-14 as amended overcome the rejection under 35 U.S.C. § 101.

Claims 1-3 were rejected under 35 U.S.C. 102(e) as being anticipated by Bourgeois (5,995,872). The Examiner contends that Bourgeois teaches the Applicants' method for modulating body organ functioning. The Applicants respectfully disagree with the Examiner's contention, and reconsideration is requested.

Bourgeois discloses an implanted device that transmits artificially generated waveforms for stimulation of the gastrointestinal tract. Bourgeois suggests nothing regarding detecting waveforms that are generated by the body, and using these specific waveforms. The Applicants' invention, as described in claim 1, describes the waveforms as being collected from a body and as being generated by the body. As such, this indicates that the waveforms used in Applicants' invention represent these naturally occurring, as opposed to the generated pulse waveforms described in Bourgeois.

Additionally, the waveforms described in Bourgeois are used with a singular purpose in mind—stimulation of the gastrointestinal tract. The waveforms in the Applicants'

invention carry no such limitation. Rather, the Applicants' invention can, for example, collect naturally occurring waveforms for breathing and apply them to a body organ to stimulate breathing.

For the reasons mentioned above, Claims 1-3 are clearly not anticipated or rendered obvious by Bourgeois.

Claims 6-9, and 15 were rejected under 35 U.S.C. 102(b) as being anticipated by Leichsenr et al. (DD 224494). The Examiner contends that Leichsenr teaches the Applicants' apparatus for modulating body organ functioning. The Applicants respectfully disagree with the Examiner's contention, and reconsideration is also requested.

Leichsenr discloses an electrical stimulator for tissue and nerve cell structures. The Leichsenr apparatus comprises a storage register for desired waveforms. However, there is no teaching in Leichsenr that these waveforms are representative of naturally occurring waveforms or were collected from a body. In one form, the Applicants' invention collects waveforms that are naturally occurring in a body and stores them for future use. Further, there is no teaching in Leichsenr that the storage register collects waveforms that are external to the microcomputer. Applicants' invention collects waveforms that are generated from a body, which is implicitly external to the computer.

Claim 6, as amended, requires the collected waveforms be naturally occurring. At no time are any of the waveforms of referred to in the Applicants' invention randomly generated by a computer. Rather, the waveforms are those actually and naturally occurring within a body—separate and external to any computer—and are then captured and collected by the apparatus. Thereafter, of course, after the waveforms are known, they can be used, or can be replicated and then used in the replicated form.

Claim 6, as amended, is therefore clearly not anticipated or rendered obvious by Leischner. Further, because claims 7-9 and 15 are dependant on claim 6, as amended, these

claims are not anticipated or rendered obvious by Leischener, either.

The Examiner has rejected claims 4 and 5 under 35 U.S.C. 103(a) as being unpatentable over Bourgeois in view of Leichsenr et al. As previously stated, claim 1 is clearly not anticipated nor is it rendered obvious by Bourgeois. Further, as previously stated regarding Leichsenr, the waveforms mentioned in Leichsenr are artificially generated waveforms not representative of those generated by the body as opposed to the naturally occurring waveforms in Applicant's invention. Therefore, claims 4 and 5 are neither anticipated nor rendered obvious by Bourgeois in view of Leichsenr.

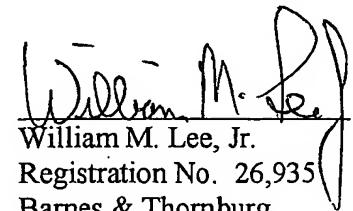
The Examiner has rejected claims 10-14 under 35 U.S.C. 103(a) as being unpatentable over Leichsenr in view of Bourgeois. As previously stated, claim 6, as amended, is clearly not anticipated nor is it rendered obvious by Leichsenr. Further, the Applicants respectfully disagree that Bourgeois teaches an apparatus that collects naturally occurring waveforms. Clearly, Bourgeois has no such teaching. Rather, as previously mentioned, Bourgeois teaches and implanted device that transmits artificially generated waveforms for stimulation of the gastrointestinal tract. Therefore, since claims 10-14 depend from independent claim 6, claims 10-14 are neither anticipated nor rendered obvious by Leichsenr in view of Bourgeois for the reasons set forth above.

Claims 16-20 are presented, corresponding to claims 1-5, but directed to collecting waveforms that are representative. These could be actual waveforms, or actual waveforms that have been replicated, as discussed above.

In light of the foregoing amendments and remarks, the Applicants believe that claims 1-15 and new claims 16-20 are allowable. Therefore, the Examiner is respectfully requested to withdraw the rejections set forth in the Office Action dated February 28, 2003 and allow this application to pass to issue.

Respectfully submitted,

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